



Request for Proposal
Vendor for Marketing Services for Cape Light Compact
JPE

Issued: 12/11/18

Proposals Due: 1/14/2019

Cape Light Compact,
261 Whites Path, Unit 4
S. Yarmouth, MA 02664

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1. General Information

1.1 Cape Light Compact

Cape Light Compact JPE (Compact) is a governmental aggregator under G. L. c. 164, section 134, providing energy services on Cape Cod and Martha's Vineyard. The Compact administers a regional energy efficiency program and works with the combined buying power of the region's over 205,000 electric consumers to negotiate for competitive electricity, including a green power offering, and other public benefits. The Compact members include the twenty-one towns in Barnstable and Dukes Counties, as well as Dukes County. It is organized as a Joint Powers Entity under the Act Modernizing Municipal Finance and Government, Massachusetts General Laws Chapter 40, 4 Section 4A1/2. The Compact maintains a business office at 261 Whites Path, Unit 4, South Yarmouth, MA 02664.

1.2 Introduction

Cape Light Compact is soliciting proposals from qualified firms to provide marketing services and assist with campaigns for all the Compact's programs. The term would commence February 4th, 2019 (estimated) and continue through December 31, 2019, at which time the contract may be renewed for up to three additional one-year terms.

The Compact's core efforts include energy efficiency, power supply, and consumer advocacy. Throughout the years, the Compact has focused on grassroots efforts to increase education and outreach to nearly 205,000 consumers on Cape Cod & Martha's Vineyard. The Compact's programs have grown substantially over the past years and will continue to grow in the coming years. The objective is to educate all electric customers about all of the Compact's various efforts.

2. Summary of Cape Light Compact Responsibilities

Cape Light Compact will provide a primary point of contact (Marketing and Communications Coordinator) who will:

1. Communicate with Vendor regarding marketing needs
2. Submit information about Compact programs to Vendor to assist with marketing
3. Review vendor materials for accuracy and alignment with current brand
4. Coordinate and publish vendor provided items to the Compact website
5. Coordinate and publish vendor provided items to Compact Social Media Accounts (Facebook, LinkedIn, Twitter, Instagram, and YouTube.)
6. Review and approve Vendor invoices

3. Services to be Provided

The Compact requests proposals from firms that can plan and execute an integrated education, outreach and marketing strategy. The selected Vendor(s) will develop a program to submit to the Compact for approval prior to implementation. Then, the Vendor(s) and any prospective sub-contractors will be expected to provide at least the following services:

- *Marketing Campaign* - Create and execute an integrated education, outreach and marketing campaign for the Compact as a whole that aligns with the Cape Light Compact Marketing Plan and targets designated stakeholders, as well as builds general brand awareness on Cape Cod and Martha's Vineyard.
- *Media Strategy* – Develop and execute an integrated media strategy, including a mass media communications plan that features paid digital, print, radio and television, including creative development and production. Actual media placement should not be included in the Scope or price proposal, as the Compact will directly pay these media outlets. Any applicable estimates should be provided in the scope for expected media buys by calendar year.
- *Annual Report* – Create format of report and detail what information should be included. These reports will be distributed to all Cape Cod and Martha's Vineyard towns and included on the website on an annual basis, starting with winter 2019. Compact staff to approve format and proof before distribution.
 - NOTE- Provide a quote for design, format, and populating of information, with an option for Compact staff to populate information.
- *Videos* - The Compact is looking to have at least six (6) short (up to 6 minute) videos created, per calendar year, on programs and offerings. Videos should be based on case studies above and tell the story of the customer, the energy efficiency measures installed and the impact the measures had. See link below for a sample of a previous video that has been completed.
 - <https://www.youtube.com/watch?v=XQazVo6g6A>
- *Materials* – Create brochures, rack cards, and flyers for distribution at local businesses and events that feature a general overview of the Compact's offerings. Specific program materials may be asked to be made as well.

- *Newsletter* - vendor will be responsible for creating and distributing a monthly e-newsletter to be distributed to the Compact's mailing list.
- *Blog Posts*- vendor will create blog posts roughly every two weeks highlighting Compact programs or the latest energy efficiency news to be posted on the Compact's website.
- *Reporting* - vendor will create monthly reports for the Compact documenting the previous month's efforts and including analytics data for all digital media and website traffic.
- *Communication*
 - Maintain weekly communications with the Compact to ensure that needs are being met and identify additional marketing and public relations opportunities.
 - A phone call will be required every two weeks stating the tasks that are currently being worked on and status of each task.

4. Schedule

RFP issued: Dec 11, 2018

Questions regarding the RFP due: December 23, 2018

All proposals due: January 14, 2019 by 2:00 p.m. ET

Vendor selected: January 31, 2019

Implementation: February 4, 2019 (estimated) – December 31, 2019

5. Proposal

5.1.1 Number of Copies and Format

Proposals, to be entitled for consideration, must be submitted in accordance with the following instructions.

The Bidder shall be responsible for submitting one (1) electronic, one (1) original and four (4) copies of the proposal in such form as set forth below.

Proposals shall be:

- Type written on 8 1/2" x 11" paper;
- The pages numbered; and
- The Proposal must also be signed in longhand in accordance with the instructions as stated in Section 6.1, "Bid Submission Page"

Acceptance of any proposals remains in the sole discretion of Cape Light Compact. Proposals which in the judgment of the Compact fail to meet the requirements of this RFP or which are incomplete or obscure, or in which errors occur will be rejected.

5.1.2 Bid Due Date

The bound Proposal must be signed and shall be delivered to The Compact within the time set forth in this RFP. Proposals will be enclosed in sealed envelopes and marked as follows:

RFP Title: Vendor for Marketing Services

Dated:

Bidder's Name:

Delivered to: Cape Light Compact JPE
261 Whites Path, Unit 4
South Yarmouth, MA 02664

Attention: Margaret Downey
mdowney@capelightcompact.org
Cape Light Compact Chief Procurement Officer

Bids must be received by January 14, 2019 by 2:00 p.m. ET. Proposals received after this time will not be considered.

5.1.3 Interpretation of the RFP

Cape Light Compact is seeking a qualified firm(s) to provide the requested services. Proposals shall be in accordance with all requirements set forth in this RFP. Should a Bidder find any ambiguity, discrepancy or omission in the RFP, the bidder should notify the Compact in writing. Such information must be received by December 23, 2018, to afford Cape Light Compact an opportunity to send any instructions or interpretations to other Bidders who have received an Invitation to Bid. Cape Light Compact will not be responsible for any oral instructions or interpretations. Please send all inquiries to:

Cape Light Compact JPE
Attn: Margaret Downey
261 Whites Path, Unit 4
South Yarmouth, MA 02664
mdowney@capelightcompact.org

5.1.4 Rights to Modify This Specification

Cape Light Compact reserves the right to modify any aspect of this RFP if the change will make the *Marketing Services for Cape Light Compact* more cost-effective and customer responsive. Only qualified Vendors experienced in providing marketing services are invited to submit proposals.

5.2 Proposal Contents

5.2.1 Narrative Requirements

Bidders must submit a proposal narrative containing the following information. Please note that Cape Light Compact reserves the right to reject any proposal, which, in its judgment, is incomplete. Please provide the following:

- a. A brief description of the business nature of the Bidder, its purpose, and its general history. Include a summary of contracts held similar in nature to the services described in this RFP;
- b. A listing of all staff proposed to provide the indicated services and summary of their qualifications, including training and experience. If existing positions are to be used, indicate the percentage of time to be devoted to this project. Include a summary of qualifications and references for each subcontractor. If the Bidder intends to hire additional staff in order to provide the proposed services, a description of its approach to hiring and the qualifications it will require of prospective employees should be included;
- c. A detailed description of the proposed approach for implementing all of the proposed services;
- d. A detailed explanation of how the Bidder proposes to coordinate and develop subcontracting relationships;
- e. A draft education, outreach and marketing plan and schedule for the first term (February 4, 2019 – December 31, 2019). This plan shall include the full mix of media types as described above, as well as others that the respondent may suggest;
- f. A detailed description of the proposed approach to electronically communicate with the Compact;
- g. The locale or anticipated locale for operations and describe how this site or sites will help satisfy the requirements of this RFP;
- h. A list of other similar contracts in force in Massachusetts and/or nationally along with the names of references to be contacted regarding your company's job performance for programs that are within the size and scope of the Cape Light Compact;
- i. Explanation of data security measures employed by the bidder regarding confidential consumer information that may be shared with the firm (consumer name and one of the following: social security number or financial account number or utility account number) and confirmation that security measures

comply with applicable federal, and state laws covering protection of Personal Information of residents of the applicable state. (In Massachusetts the applicable Regulation is 201 CMR 17.00 - STANDARDS FOR THE PROTECTION OF PERSONAL INFORMATION OF RESIDENTS OF THE COMMONWEALTH [Effective date of Mass Regulation is 3/1/10.]);

- j. Any exceptions to the Contract provided in section 6.2

5.2.2 Pricing Structure

Bidders shall submit a completed bid form detailing estimated costs, by key program tasks, on a time and material basis, indicating hourly rates for personnel, travel, total hours and total cost for completing the project by year.

Any start-up costs, which are nonrecurring, or which may be expected to be reduced, over time should be clearly identified. Bidders shall describe how their unit prices would change, if at all, in the event that the actual participation targets for the programs and measures differ from the budget estimates.

5.2.3 Qualification of Bidders

The competency and responsibility of Bidders and of any proposed Sub-Contractors will be considered in making the award. Cape Light Compact expressly reserves the right to reject any or all Proposals (either generally or in a particular instance and either retroactively or prospectively) and to waive any informalities or regularities in Proposals, and to accept that Proposal whether it be the lowest bid or not, which in the unilateral judgment of the Compact best serves the Cape Light Compact's purpose and intent provided, that, no course of dealing or delay or omission on the part of the Barnstable County in exercising such right shall operate as a waiver thereof.

5.2.4 Sub-Contracts

The Bidder shall submit with its Proposal the names and addresses of any Sub-Contractors proposed for principal parts of the Work and their price. The Compact encourages the utilization of Cape Light Compact territory-based contractors. The cost of work proposed by each said Sub-Contractor shall be included in this information. Cape Light Compact reserves the right to substitute other Subcontractors to provide like services or materials.

5.2.5 Substitutions

N/A

5.2.6 Massachusetts State Sales Tax

Massachusetts Sales Tax on materials and equipment rentals or any other taxable items for use in the completion of lump sum or guaranteed price contracts will be paid by the Program Contractor who is considered the consumer and not billed to the Cape Light Compact or its customers. Said Massachusetts Sales Tax shall be incorporated into the cost prices used in determining the bids submitted. Any amounts owing, due, claimed or paid with regard to such taxes shall be subject to the indemnification provisions of the contract.

5.2.7 Detailed Bid Information

Where specific information (such as names, addresses, and prices of any Sub-contractor; number of working days and/or calendar days required to complete the Work; or other data) requested in the written Proposal is omitted, the Bidder may be automatically eliminated from consideration for the Contract at the discretion of Cape Light Compact.

5.3 Acceptance of Proposals and Award of Contract

The Compact, at its sole discretion, may accept entire proposals submitted by a Bidder, or accept portions of proposals submitted by a Bidder, or reject proposals in whole or in part.

Screening Proposals for Compliance with Submission Requirements and Minimum Evaluation Criteria will include utilizing the proposal submission requirements and the minimum criteria incorporated herein. The Selection Committee, to be designated by the Compact Administrator, shall screen proposals as to their responsiveness, and identify those which are responsive. Any proposal, which in the opinion of the Evaluation Committee, fails to include the information or documentation specified in the submission requirements shall be determined to be non-responsive and shall be rejected. Any bidder who fails to meet any of the standard set forth as minimum criteria shall be determined to be non-responsive and shall be rejected. All other proposals meeting both the submission requirements and minimum evaluation criteria shall be considered qualifying proposals.

The Compact reserves the right to waive portions of the RFP for all bidders and to waive minor informalities as defined by Chapter 30B or allow the bidder to correct them. The remaining responsive proposals shall be evaluated using the comparative evaluation criteria incorporated herein. Each proposal shall be assigned:

- a) a separate rating for each comparative evaluation criterion; and
- b) a composite rating.

Proposal ratings and accompanying written explanations shall be forwarded to the Compact Administrator.

Methodology for Determining Best Price:

Taking into consideration price and the evaluations of the Evaluation Committee, the Chief Procurement Officer shall determine the most advantageous proposal. Award of the contract is subject to the approval of the Cape Light Compact Board of Directors.

5.3.1 Selection Criteria

The final selection of a consultant(s) shall be based on the following sets of criteria:

Minimum Evaluation Criteria

- a. Submission of all required documentation and certifications detailed in Proposal Contents.
- b. Demonstrated capacity to understand and provide a full range of services to address the issues facing Cape Light Compact.
- c. Demonstrated understanding of electric utility restructuring issues.
- d. Experience, references and proven ability to meet schedules.
- e. Submitted proposal responds to the issues identified in the RFP.

Comparative Evaluation criteria

Question Weighting	Section
20.0% Experience	
2.00%	Demonstrated experience and expertise with Energy Topics
5.00%	Demonstrated experience and expertise with similar programs
5.00%	Demonstrated prior experience implementing / transitioning similar programs
3.00%	Bidder team member roles and responsibilities are identified
5.00%	Quality and experience of the account management team
50.0% Understanding of the SOW	
25.00%	Demonstrated a good understanding of the SOW
25.00%	Demonstrated capabilities to perform activities in the SOW. The work plan is comprehensive and achievable
30.0% Other questions	
10.00%	IT Capabilities
5.00%	Transition plan (If applicable)
10.00%	Local presence in the service territory (Or plan to start operation in the service territory)
5.00%	Reporting capabilities

Contract negotiations will commence in order to complete a signed contract within 15 days of contract award. All contracts will incorporate the general terms and conditions included with the bid package and the written documents provided by the Bidder in its bid.

If a contract is not executed by the chosen Vendor by **February 4, 2019** The Compact reserves the right to negotiate with an alternative Bidder. All exceptions to the contract must be noted in writing and included within the body of the proposal

5.4 Proposal Confidentiality

All proposals will become the property of Cape Light Compact. As a public entity it may become necessary to supply price information to regulatory agencies for review. The Compact will request that all such information be treated confidentially by the regulatory agencies and The Compact will furnish such information when required. If any proprietary information is contained in the Proposal, it should be clearly identified and will be treated as such provided that the Cape Light Compact, officers, and employees shall be liable for any action taken, or omitted to be taken, in good faith by it or them hereunder or be responsible for the consequences of any oversight or error in judgment thereof except for direct losses due to its or their willful misconduct or gross negligence.

5.4.1 Return of Proposal Materials

Proposal materials will not be returned to Bidders. All costs incurred by Bidders in the preparation and submission of a proposal and/or oral presentation shall be the sole responsibility of Bidders

6. Attachments

6.1 Bidder's Submission Statement

The following must be completed and included in each Bidder's proposal:

The undersigned Bidder hereby offers to perform the Services as described in the Request for Proposal (RFP) dated [DATE], prepared by Cape Light Compact, in accordance with the Proposal attached hereto. This bid offer is firm and shall remain in effect for a period of sixty (60) days after receipt thereof by Cape Light Compact.

In connection with such offer, the undersigned represents and warrants to Cape Light Compact that it has carefully and thoroughly reviewed the entire RFP and that it possesses the special experience, skills, and abilities necessary to perform the Services bud on in accordance with the specifications detailed in the RFP.

Name of Bidding Firm

Signature

Name of Signatory (print or type)

Position with (print or type)

6.2 Contracts for Energy and Energy-Related Services Chapter 30B
Compliance Form

Contracts for Energy and Energy-Related Services

Chapter 30B Compliance Form

By letter dated _____, I have provided a copy of a contract and a report of the process used to execute the contract to each of the following parties in compliance with M.G.L. c. 30B, § 1(b)(33):

- Mark Marini, Secretary
Department of Public Utilities
One South Station, 2nd Floor
Boston, MA 02110
- Office of the General Counsel
Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114
- Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108

Signature

Printed Name

Title

Name of Contract

Date of Contract Execution

6.3 Draft Contract

PROFESSIONAL/CONSULTING SERVICES AGREEMENT

This PROFESSIONAL/CONSULTING SERVICES AGREEMENT (“Agreement”) is made by and between the Cape Light Compact JPE, a joint powers entity organized pursuant to G.L. c. 40, §4A½ and the organizational successor to the Cape Light Compact (the “Compact”), and [insert] (“Consultant”). The Compact and Consultant may be referred to herein collectively as the “Parties,” or either singularly as a “Party.” This Agreement is effective as of [insert].

WHEREAS, pursuant to G.L. c. 40, §4A, in 1997, the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County entered into an inter-governmental agreement, as amended from time to time, to act together as the Compact;

WHEREAS, in 2017, the Compact undertook a reorganization and began fully operating as a joint powers entity as of July 1, 2017;

WHEREAS, the purposes of the Compact include protecting and advancing the interests of residential, commercial and industrial customers in a competitive electric supply market, and promoting energy efficiency and the reduction of energy bills;

WHEREAS, the Compact is operating an Energy Efficiency Plan which is periodically updated and approved by the Massachusetts Department of Public Utilities;

WHEREAS, the Compact issued a Request for Proposal on [insert date] for the performance of Marketing services;

WHEREAS, the Compact seeks to enter into an agreement with Consultant for certain services which are defined in Section 2.1 in connection with the energy efficiency programs that it operates or will operate under the Energy Efficiency Plan; and

WHEREAS, Consultant has the expertise required to provide the Compact with the services required pursuant to this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, Consultant and the Compact do hereby agree as follows:

SECTION 1 TERM OF AGREEMENT AND TERMINATION

1.1 **Term.** This Agreement is effective as of the date set forth above and shall continue in force and effect until [insert], unless this Agreement is terminated before such date under the provisions of Section 1.2. In addition, the Compact may, in its sole discretion, extend the term of this Agreement for an additional [insert] year(s).

1.2 **Termination.** The Compact shall have the right to terminate or suspend this Agreement for any reason, including, but not limited to, in the event that the Consultant is in default under another consulting or installation services agreement between Consultant and the Compact, or for convenience. Consultant may terminate this Agreement only if the Compact materially breaches its obligations under this Agreement. The terminating Party shall provide written notice to the other Party of any such termination or suspension, specifying the effective date thereof. If the terminating Party is the Compact, such notice shall be given at least fifteen (15) calendar days before such effective date; if the terminating Party is Consultant, such notice shall be given at least ninety (90) calendar days before such effective date. In addition, if the Compact terminates this Agreement for cause, the Compact shall be entitled to deduct and/or be reimbursed any costs of cure and transition costs (including reasonable attorneys' fees) that it, a Member¹ or a Customer (as defined herein) incurs related to engagement of a substitute Consultant.

1.3 **Termination or Suspension Due to Changes in Funding.** This Agreement is subject to the receipt of funds from various sources to support the Energy Efficiency Plan. If for any reason such funding is terminated, suspended, or restricted, this Agreement will become null and void, effective immediately upon notice to Consultant. The Compact shall provide written notice of such termination or suspension to Consultant. In the event of such termination or suspension, Consultant shall be paid for all authorized, satisfactory (in the reasonable discretion of the Compact) Services performed up to and including the date of termination or suspension.

¹ For the purposes of this Agreement, the term "Member" means the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, Yarmouth, Dukes County, and any other governmental unit that becomes a member of the Compact during the term of this Agreement.

1.4 **Obligations upon Termination.** Following termination of this Agreement, the Parties shall each discharge by performance all obligations due to the other Party that arose up to the date of termination of this Agreement.

SECTION 2 SCOPE OF SERVICES AND RELATED MATTERS

2.1 **Services.** Consultant agrees to provide the expertise, labor, materials and supplies necessary to perform the services and deliverables described in Exhibit A attached hereto from time to time and such other services as may be specifically requested by the Compact from time to time (the “Services”). All such Services and deliverables shall be designed to achieve the anticipated outcomes specified in the description of Services and shall be provided in accordance with the terms and conditions of this Agreement.

2.2 **Changes.** The Compact may, from time to time, require changes in the scope of the Services to be performed hereunder. Such changes must be evidenced in written amendments to this Agreement. Any Services performed or proposed by Consultant shall not be reimbursed unless they are approved in writing by the Compact prior to their rendering.

2.3 **Timing of Performance.** Consultant shall commence and complete the Services in accordance with the project milestone schedule incorporated into Exhibit A. If no schedule is incorporated, Consultant shall begin to render the Services on the effective date of this Agreement and shall continue to render the Services in a prompt and timely manner.

2.4 **Staffing; Background Check Requirements.** The Compact may require Consultant to remove from its project team such employees of Consultant or subcontractors of Consultant as the Compact, in its reasonable discretion, deems objectionable, or whose continued employment in connection with the Services is deemed by the Compact, in its reasonable discretion, to be contrary to the best interests of the Compact.

Upon request by the Compact, Consultant shall comply with the Compact’s written requirements for employee background checks, as set forth in Exhibit C, and as may be amended from time to time by the Compact.

[] required [] not required

2.5 **Conflicts of Interest.** Consultant covenants that it presently has no interest, and shall not acquire any interest, directly or indirectly that would conflict in any manner or degree with the performance of the Services. Consultant agrees to diligently serve and endeavor to further the best interests of the Compact, as known or made known to Consultant. Consultant further agrees not to undertake activities that conflict, or are not in accordance with, the best interests of the Compact, and will disclose any other employment or engagements that could conflict with its obligations under this Agreement. Consultant further covenants that it shall comply with all relevant provisions of G.L. c. 268A.

2.6 **Points of Contact.** Consultant names [insert], as the day-to-day point of contact for the Compact for all issues arising under this Agreement and the person responsible for ensuring over the entire term of this Agreement that the Services are performed and completed in a manner satisfactory to the Compact and in accordance with the terms of this Agreement. The Compact names [insert] to be the day-to-day point of contact for Consultant for all issues arising under this Agreement.

SECTION 3 COMPENSATION AND RELATED MATTERS

3.1 **Rates of Compensation.** Consultant shall be compensated by the Compact for the Services in accordance with the terms and rates set forth in Exhibit B hereto. The Compact may reject any invoices using billing rates that are not consistent with Exhibit B, unless the Compact has previously accepted such substitute rates in a written amendment to this Agreement.

3.2 **Invoicing and Payment.** Consultant shall submit monthly invoices to the Compact by the 10th day of each month, unless otherwise authorized in writing by the Compact. The Compact will remit payment within forty-five (45) calendar days of the Compact's receipt of each monthly invoice. Payment may be contingent upon final inspection and/or acceptance of the Services. Upon request, Consultant shall provide to the Compact all backup documentation required to establish the value of the Services performed to date as represented by Consultant's monthly invoices.

3.3 **Effect of Payment.** The Compact shall not be deemed to have accepted any improper Services, materials or performance by virtue of any payment made to Consultant. Payments shall be deemed advances and are subject to adjustment for errors, overpayments, or the Compact's good faith determination that the remaining balance of payments may be insufficient to ensure completion of the Services.

3.4 **Withholding.** The Compact may withhold a payment of all or a part of any invoice to the extent as may be necessary to protect itself from loss caused by: (i) defective Services not remedied;

(ii) claims filed or reasonable evidence indicating probable filing of claims by other parties against Consultant or the Compact in connection with the Services; (iii) Consultant's failure to make payments properly to subcontractors for materials, labor or equipment; (iv) unsatisfactory performance of the Services; (v) Consultant's failure to pay any amounts due to the Compact; or (vi) Consultant's failure to perform any of its obligations under this Agreement. In addition, if the Compact has a reasonable indication that the unpaid balance will be insufficient to cover the cost to complete the Services or that the Services will not be completed within the project milestone schedule (if any), the Compact may withhold payment of all or a part of any invoice to the extent as may be necessary to protect itself from such anticipated losses. The Compact shall notify Consultant of the grounds for any withholding. When Consultant provides performance assurance satisfactory to the Compact that will protect the Compact for the amount withheld, payment will be made. When deemed reasonable by the Compact, the Compact may use such withheld funds to undertake remedial measures.

3.5 **Credits.** Consultant may not claim any governmental or other energy efficiency credits, tax credits, forward capacity payments, carbon offsets, rebates or incentives of any kind as a result of or in connection with the Services performed under this Agreement (collectively, the "Credits") without the written consent of the Compact in its sole discretion. To the extent any Credits are allocated to the Compact, a Compact project or to a Compact customer/program participant ("Customer"), by operation of law or regulation, Consultant shall, upon request and without charge, cooperate fully with the Compact to disclaim any rights to such Credits and to assign or allocate all such Credits, and the value thereof to the party designated by the Compact.

SECTION 4 PERFORMANCE STANDARDS

4.1 **General Performance Standard and Warranty.** Consultant assumes professional and technical responsibility for the performance of the Services in accordance with the terms of this Agreement and Good Industry Practice, and any additional guarantee or warranty specified in the description of Services set forth in Exhibit A. If, during the performance of the Services or within one (1) year following completion thereof, the Services fail to meet such standards, Consultant shall promptly and timely (no more than five business days) furnish all remedial services and materials necessary to correct such deficiencies at Consultant's sole cost and expense. Consultant shall also be responsible for reimbursement of the Compact's losses related to such defective Services during the warranty period. For purposes of this Section 4.1, the term "Good Industry Practice" means the practices, methods and acts (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the energy efficiency industry in the performance of consulting services) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition. Good Industry Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

4.2 **Representations, Warranties and Continuing Covenants.** In performing its obligations hereunder during the term of this Agreement, Consultant represents and warrants that it shall: (i) exercise reasonable care to assure that its operations are prudently and efficiently managed; (ii) employ an adequate number of competently trained and experienced personnel to carry out the Services; (iii) spend such time in performing the Services as is reasonable and necessary to fulfill effectively its obligations under this Agreement; (iv) comply with all relevant industry standards and practices for the delivery of Services to the Compact; (v) comply with applicable laws and professional licensing requirements; (vi) ensure that it validly owns or licenses all intellectual property used in the performance of the Services, with a right to sublicense to the extent necessary, and that such licenses are maintained at all times during the term of this Agreement; and (vii) provide the required notice under Section 7.5 (Notice of Claims) of this Agreement.

4.3 **Correction of the Services.** Consultant is required to correct in a prompt and timely fashion any Services rejected by the Compact. Consultant shall correct at its own cost and bear the expense of additional services performed to correct non-conforming Services. If Consultant fails to cure the default or produce a plan acceptable to the Compact (in its reasonable discretion) to cure the default in a prompt and timely fashion, the Compact may take over the Services or any separable part thereof, and complete the same or have the same completed at Consultant's expense. In taking over, the Compact shall have the right, for the purpose of completing the Services, to take possession of all equipment, supplies and materials belonging to Consultant and purchased or leased for the performance of the Services. For such purpose, this Agreement shall be construed as an assignment by Consultant to the Compact of said equipment, supplies and materials.

4.4 **Periodic Reporting.** Upon the request of the Compact, the Consultant shall promptly submit a report detailing the status of the Services including the progress toward achieving completion of any deliverables or project milestones. Additional reporting requirements may be set forth in Exhibit A.

SECTION 5 INTELLECTUAL PROPERTY MATTERS

5.1 **Intellectual Property Rights; Work for Hire.** Consultant agrees that any work of authorship created or developed by Consultant during performance or delivery of services to the Compact, either individually or jointly with others, in the course of the rendering the Services to the Compact shall be deemed a "work for hire," and the exclusive property of the Compact. To the extent not deemed a "work for hire" by operation of law, with respect to any invention, trade secret, or work of authorship created or developed in the course of the rendition of services to the Compact, Consultant hereby irrevocably assigns, transfers, and conveys to the Compact all of Consultant's right, title and interest in such property, including but not limited to, all rights of

patent, copyright, trade secret or other proprietary right in such property. Further, Consultant agrees to execute any documents or take any action reasonably requested by the Compact to perfect the Compact's ownership of any such property. Consultant further agrees that, to the best of its knowledge, all work created or developed by Consultant will be original and non-infringing.

5.2 Dissemination of Information. Consultant shall not disseminate any information, reports, information, data, etc., created, prepared, assembled or obtained in performance or delivery of Services to any third party without the prior written consent of the Compact. Consultant shall not issue publicity, advertising, news releases, grant press interviews or create or distribute social media regarding the Services or the Compact during or after the performance or delivery of the Services without the prior written consent of the Compact.

SECTION 6 INSURANCE

Unless waived by the Compact in writing, upon a finding under special circumstances giving rise to minimal liability under this Agreement and risk to the Compact, Consultant shall, at its sole expense, procure and maintain the following insurance:

(a) Until completion of the Services:

i. Workers' Compensation and Employers' Liability Insurance covering *each and every worker employed in, about or upon the Services*, as provided for in each and every statute applicable to the Workers' Compensation and Employers' Liability Insurance.

ii. Commercial General Liability Insurance, written on an occurrence form including coverages for Bodily Injury, Broad Form Property Damage, Personal Injury, Products/Completed Operations, Liability arising out of Subcontractors, Contractual Liability (to specifically include coverage for the indemnification clause of this Agreement), and so-called Explosion, Collapse and Underground Hazards, with minimum limits of \$1,000,000 per occurrence/\$2,000,000 per project general aggregate; \$1,000,000 aggregate for products and completed operations.

iii. Automobile Liability Insurance covering all owned, non-owned and/or hired motor vehicles to be used in connection with the Services with a minimum combined single limit of \$1,000,000 bodily injury and property damage, including Form MCS-90 and Broadened Pollution Coverage via ISO form CA9948 or its equivalent.

iv. Umbrella Liability Insurance covering over underlying General Liability, Auto Liability and Employers' Liability Insurance with a minimum limit of \$5,000,000.

v. Professional Liability Insurance covering Consultant's errors and omissions relating to the Services if the Services involve rendering of professional advice or consultation, including designs, surveys, drawings, approval of maps, etc. Such insurance shall be provided at a limit of at least \$1,000,000. Such insurance may be maintained on a "claims made" basis but in such case it shall always be subject to a retroactive date that is effective prior to the effective date of this Agreement.

vi. Network Security and Privacy Liability (a/k/a Cyber Liability) Insurance including coverage for liability arising from loss or disclosure of business data; system or privacy breach; denial or loss of service; introduction, implantation or spread of malicious software code; and unauthorized access to or use of computer systems or business data with minimum coverage limits of \$1,000,000 each occurrence/claim. If coverages are provided on a claims-made basis, any applicable coverage retroactive date shall always be the effective date of this Agreement.

(b) After the Services are complete:

i. Products and Completed Operations for limits of \$1,000,000/occurrence; \$1,000,000 aggregate as provided by the Commercial General Liability Insurance form for three years.

ii. Professional Liability Insurance if the Services involves rendering of professional advice or consultation, including designs, surveys, drawings, approval of maps, etc. with a limit of at least \$1,000,000 for three years.

The Compact reserves the right to refuse any exception to the standard limits and coverages if it is determined that the exception is not in the best interest of the Compact. Consultant's insurance companies are to be licensed as "admitted" carriers in Massachusetts with minimum acceptable A.M. Best ratings of "A" and size Class VIII, or as otherwise acceptable to the Compact, in its discretion. The Compact reserves the right of final approval of Consultant's insurance companies.

Consultant agrees to waive any rights of subrogation against the Compact, the Compact's Customers, Members, and their respective employees, subcontractors, engineers, workers and agents. Consultant shall name the Compact and its officials and employees as additional insureds on

its commercial general liability insurance, automobile liability insurance and umbrella liability insurance policies.

Consultant shall not begin rendering Services without first submitting to the Compact the insurance certificate(s) that indicate the coverages required by this Agreement. The insurance certificate(s) shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Consultant and Consultant shall in turn provide at least (thirty) 30 days advance notice of cancellation to the Compact. If the policy expires prior to completion of the Services, Consultant must submit replacement insurance certificate(s) prior to the policy expiration date. Failure to submit new certificates shall result in withholding payments and/or may lead to the termination of this Agreement. Consultant shall be solely responsible for tracking and reporting to the Compact the expiration of the policies shown on the insurance certificate(s) provided.

SECTION 7 INDEMNIFICATION BY CONSULTANT² AND DAMAGES FOR BREACH

7.1 **Indemnification.** To the fullest extent allowed by law, Consultant (and its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) shall indemnify, defend, and hold harmless the Compact, the individual Members (and all of the respective officials, officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns of the Compact and each individual Member), and all Customers from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, and/or judgments caused by, arising out of, or related to any act or failure to act of Consultant (and/or its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) related to this Agreement, including, but not limited to, any failure on the part of Consultant (and/or its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) to perform or comply with any of the covenants, agreements, terms, or conditions contained in this Agreement on its part to be performed or complied with. Consultant's indemnification obligation includes claims related to the unauthorized use of any trade secrets, patent infringement, or trademark or copyright violation. Consultant's indemnification obligation is not limited in any way by the amount or type of damages or compensation payable by the Compact. Consultant agrees to pay all costs relating to indemnification claims, including reasonable attorneys' fees incurred in investigating and responding to claims, within thirty (30) days of receipt of a payment request.

² Note to Consultant: In accordance with guidance received from the Massachusetts Office of Attorney General, the Compact cannot indemnify private parties.

7.2 **Duty to Mitigate.** Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

7.3 **Limitations.** NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, Consultant acknowledges that the preceding sentence shall not limit the Compact's rights to seek indemnification from Consultant for consequential, punitive, or incidental damages or other such losses claimed by third parties.

7.4 **No Cap on Consultant's Liability.**³ Consultant's liability under this Agreement shall not be limited to the value of the Services rendered under this Agreement; further, Consultant's liability shall not be limited by the availability of its insurance coverage.

7.5 **Notice of Claims.** Consultant will provide formal written notice to the Compact in the event that Consultant receives notice of pending or threatened litigation, claims or assessments against the Consultant or the Compact in connection with the Services rendered by the Consultant under this Agreement.

SECTION 8 CHOICE OF LAW AND DISPUTE RESOLUTION

This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws.

Any dispute that arises regarding this Agreement that cannot be resolved by informal negotiations shall be submitted to nonbinding mediation. If the parties cannot agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. Each Party shall bear its own mediation costs. Injunctive relief may be sought by either Party without resorting to mediation to prevent irreparable harm. Exclusive venue for any judicial proceeding involving a dispute arising from this Agreement shall be Barnstable County Superior Court, Massachusetts. In any judicial action, the "Prevailing Party" shall be entitled to payment from the opposing party of its reasonable costs and fees, including, but not limited to, attorneys' fees arising from the civil action. "Prevailing Party" means the Party who most substantially prevails in its claims or defenses in the civil action. Consultant shall diligently carry on the Services and

³ Note to Consultants: The Compact does not accept liability caps as a matter of public policy, and the constitutional prohibition on providing private parties with indemnification rights may also apply.

maintain the project milestone schedule during any dispute resolution proceedings, unless otherwise agreed to by the Compact in writing.

SECTION 9 ASSIGNMENT AND SUBCONTRACTING

Except as expressly permitted in Exhibit D, none of the Services shall be subcontracted or assigned, in whole or in part, without the prior written approval of the Compact, in its sole discretion. No subcontract or assignment shall relieve or discharge Consultant from any obligation or liability under this Agreement except as specifically set forth in the instrument of approval. Consultant shall provide prompt notice to the Compact of any such permitted subcontract or assignment, together with the name and address of the assignee, and a copy of the subcontract or assignment instrument.

Any subcontractor who has been subcontracted, assigned or delegated thirty percent (30%) or more of the Services must abide by all of the terms and conditions of this Agreement, including, but not limited to, insurance requirements. The Compact reserves the right to impose these requirements on subcontractors performing less than thirty percent (30%) of the Services.

SECTION 10 CONFIDENTIALITY AND CUSTOMER INFORMATION

10.1 **Confidentiality.** Through the term of this Agreement, the Parties may share certain confidential or proprietary information with each other. The Parties agree not to use this information for any purposes other than as needed to meet their respective obligations under this Agreement and to protect such information to the same standards as each Party holds its own confidential or proprietary information. The disclosure and use of such information shall also be governed by the Non-Disclosure Agreement entered into by the Compact and the Commonwealth Electric Company d/b/a NSTAR Electric dated May 10, 2001, and acknowledged and accepted by Consultant in writing on [insert] and any subsequent non-disclosure agreements in which the Compact is a party and that involves the Services or obligations under this Agreement.

10.2 **Customer Information.** To the extent Consultant (or its subcontractors or any other party acting by or on behalf of Consultant) is provided or has access to Customer information, the following provisions apply: Consultant warrants and represents that the Consultant and its subcontractors and all other persons or entities having access to the Customer information by or through the Consultant have the appropriate safeguards in place to prevent the disclosure or use of any Customer information received from the Compact or its Customers, and further agrees to use such information solely for the purpose of performing Services for the Compact under this Agreement. Such safeguards shall include, without limitation, security policies, tools and processes restricting access to such Customer information to persons on a need-to-know basis, adequately training and notifying its employees and contractors of the restrictions associated with such

information, identifying and correcting any impermissible use or disclosure, and immediately reporting any such use or disclosure. Consultant also agrees to comply with all applicable state, federal and local laws, regulations, codes and policies regarding the protection of Customer information, and the avoidance of theft or fraud through the improper use or disclosure of such information, including, without limitation, G.L. c. 93H and the regulations promulgated thereunder (including, without limitation, the maintenance of a Written Information Security Program in accordance with 201 C.M.R 17.00 et seq.). Upon the request of the Compact, the Consultant shall provide the Compact with detailed information and documentation regarding such safeguards, and with certifications regarding the same by an authorized officer of the Consultant, and the Compact shall have the right to monitor and audit the compliance of the Consultant at any time with the requirements of this provision. All such Customer information shall be returned to the Compact upon the Compact's request (or destroyed if so directed by the Compact), and the Consultant shall retain no copy or other record thereof. Consultant shall give immediate notice to the Compact of any incident that may cause such Customer information to be disclosed or otherwise used in an unauthorized manner. Such notice shall set forth all relevant information regarding the incident, including the specific nature and extent of the disclosure/use, the measures taken and to be taken to retrieve and restore the Customer information and/or to otherwise prevent the unauthorized use or disclosure of the Customer information. Consultant shall, at its sole cost, cooperate fully with the Compact and, as necessary, any law enforcement, regulatory authority, insurance carrier, auditors, attorneys and other parties in the investigation and evaluation of such incident, and shall implement at its sole cost any remedial measures recommended by any such parties as approved by the Compact. The Customer information shall remain confidential in all circumstances.

SECTION 11 MISCELLANEOUS

11.1 **Notices.** All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and

if to Consultant to:

[insert]

if to the Compact to:

Margaret T. Downey
 Cape Light Compact JPE Administrator
 Cape Light Compact JPE
 261 Whites Path, Unit 4

South Yarmouth, MA 02664

mdowney@capelightcompact.org (email)

Except for any notice required by law to be given in another manner, all notices, waivers, demands, or other communications required or permitted by this Agreement to be effective shall be in writing, properly addressed, and shall be given by: (i) personal delivery; (ii) established overnight commercial courier delivery service with charges prepaid or duly charged by the sender; or (iii) registered or certified mail, return receipt requested, first class, postage prepaid. Notices given hereunder shall be deemed sufficiently given on: (i) the date of personal delivery if so delivered; (ii) the day after sending if sent by established overnight commercial courier delivery service; or (iii) the fifth day after sending if sent by registered or certified mail. Either Party may additionally provide notice by electronic mail, facsimile, or telephone communication, but this shall not relieve the Party of the obligation to provide notice as specified above.

11.2 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. To the extent any of the exhibits to this Agreement contain terms that conflict with the terms set forth in the main body of this Agreement, the language in the exhibits shall be disregarded. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

11.3 Independent Contractor; No Joint Venture. Consultant will perform all Services under this Agreement as an independent contractor. Consultant understands and agrees that none of its employees are Compact employees by virtue of entering into this Agreement. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Compact and Consultant hereunder are individual and neither collective nor joint in nature.

11.4 Joint Workproduct; Independent Counsel. This Agreement shall be considered the workproduct of both Parties hereto. Each Party acknowledges that it has been represented by independent counsel or has had the opportunity to seek counsel in connection with this Agreement and all matters pertinent to it, and each Party waives the benefit of the rules of construction providing that an agreement should be construed against its drafter.

11.5 Waiver. No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to

complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

11.6 **Records; Audit.** Consultant shall maintain books, records, and other compilations of data pertaining to the requirements of this Agreement to the extent and in such detail as shall properly substantiate claims for payment under this Agreement. Consultant agrees that the Compact may audit Consultant's books, records, and other compilations of data associated with the performance of this Agreement to ascertain that the payments requested by Consultant represent the value of the Services. All records shall be kept for a period of six (6) years commencing on the first day after final payment under this Agreement. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the retention period, all records shall be retained until the completion of the action and resolution of all issues resulting therefrom, or until the end of the retention period, whichever is later.

11.7 **Solicitation.** Consultant shall not solicit work from a Customer for two (2) years following termination of this Agreement for any reason, unless Consultant can prove that it has a pre-existing relationship with such Customer. For purposes of this section, "pre-existing relationship" means a relationship pursuant to which Consultant performed services for the Customer prior to performing services for that Customer under an energy efficiency services program run by the Compact, the Commonwealth Electric Company d/b/a Eversource Energy, or any other utility. Consultant may directly perform services for a Customer if such Customer has solicited Consultant. Consultant shall not engage in targeted solicitations using Customer information obtained as a result of its performance of the Services or otherwise related to this Agreement. The prohibitions in this section shall not apply to general marketing campaigns of Consultant.

11.8 **Headings and Captions.** The headings and captions appearing in this Agreement are intended for reference only, and are not to be considered in construing this Agreement.

11.9 **Political Activity Prohibited.** None of the services to be provided by Consultant hereunder shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or in connection with any referendum question or legislative or grass-roots lobbying activities.

11.10 **Anti-Boycott Warranty.** Consultant hereby warrants that, during the term of this Agreement, neither it nor any "affiliate of the Consultant," as hereafter defined, shall participate in or cooperate with an international boycott, as defined in 26 U.S.C.A. §999 (b) (3) and (4), or engage in conduct declared unlawful by G.L. c. 151E, §2. An "affiliate of the Consultant" shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by

Consultant, or by a person or persons or business entity or entities that directly or indirectly own at least 51% of the ownership interests of Consultant.

11.11 **Non-Discrimination in Employment and Affirmative Action.** Consultant shall take affirmative action to ensure that its employees, and any member of the public eligible for service under the Energy Efficiency Plan, are treated without regard to race, color, sex, marital status, sexual orientation, age, religion, national origin, ancestry, handicap, disability, or veteran status. Consultant agrees to comply with all applicable federal, state, and local laws, rules, and regulations prohibiting discrimination in employment and in public accommodations.

11.12 **Procurement Process.** [In entering into the Agreement, the Parties complied with the competitive procurement procedures required under G.L. c. 30B or [If this Agreement was procured under G.L. c. 30B, Consultant represents that it has executed all certifications required by such statute, or will provide them concurrently with execution of this Agreement.

11.13 **Third-Party Beneficiaries.** Each individual Member is an intended third-party beneficiary of this Agreement, entitled to the full rights of this Agreement.

11.14 **Savings Clause.** If any section, sentence, clause, or other portion of this Agreement is for any reason held invalid or unconstitutional by any court, federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

11.15 **Survival of Obligations.** Termination of this Agreement for any reason shall not relieve either Party of any obligation accrued or accruing prior to such termination. In addition, the terms of Section 7 (Indemnification) and Section 8 (Dispute Resolution) and any other term that by its nature should survive, shall survive the expiration of termination of this Agreement.

11.16 **Counterpart Execution; Scanned Copy.** This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the effective date first above written.

CONSULTANT

CAPE LIGHT COMPACT JPE

Signature
Print Name: _____
Title: _____

Signature
Margaret T. Downey
Cape Light Compact JPE Administrator &
Chief Procurement Officer

Date

Date

LIST OF EXHIBITS

- Exhibit A - Services
- Exhibit B - Compensation
- Exhibit C - Background Check Policy
- Exhibit D - Pre-approved Subcontractors

EXHIBIT A
SERVICES

EXHIBIT B
COMPENSATION

EXHIBIT C
BACKGROUND CHECK POLICY

EXHIBIT D
PRE-APPROVED SUBCONTRACTORS